

# Bank of the West

CORPORATE BANKING DIVISION  
180 Montgomery Street  
San Francisco, California 94104  
(415) 765-4835

RECORDATION NO. 14180 Filed 1983  
OCT 25 1983 - 9 51 AM  
INTERSTATE COMMERCE COMMISSION

October 21, 1983

2981040

No. 1 OCT 25 1983  
Date .....  
Fee \$ 50.00.....

ICC Washington, D. C.

Interstate Commerce Commission  
Interstate Commerce Building  
12th Street & Constitution N.W.  
Washington D.C. 20423

Attn: Mildred R. Lee, Room 2303

Re: Security Interest of Bank of The West

Ladies and Gentlemen:

You are hereby requested to record the enclosed Security Agreement, of which there is one original and two counterparts thereof. Enclosed is a Cashier's Check in the amount of \$50.00 to cover your recordation fee.

Under the Security Agreement Mark Hungerford whose address is 56 Toussin Ave Ross, Ca 94957 grants a security interest in the equipment herein after described in this letter to the Bank of The West, a California Corporation, whose address is 180 Montgomery St. San Francisco, Ca 94104.

The Security Agreement relates to the railway equipment as describe in Exhibit "A" of our Security Agreement.

When recorded, the document should be returned to:

Bank of the West  
Attn Louise Reams  
180 Montgomery St 4th Floor  
San Francisco, Ca 94104

Very Truly yours,

Bank of the West

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

**10/25/83**

OFFICE OF THE SECRETARY

**Bank Of The West**  
**Attn: Louise Reams**  
**180 Montgomery St.4th Fl.**  
**San Francisco, Calif. 94104**

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **10/25/83** at **9:05am** and assigned recordation number(s). **14180**

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

SE-30  
(7/79)

OCT 25 1983 9 05 AM  
EQUIPMENT SECURITY AGREEMENTINTERSTATE COMMERCE COMMISSION  
October 14, 1983

THIS EQUIPMENT SECURITY AGREEMENT (hereinafter referred to as "this Agreement") dated October 14, 1983, between BANK OF THE WEST (the Secured Party hereinafter called "Bank") with its place of business at 180 MONTGOMERY ST SAN FRANCISCO CA 94104 and Mark C. Hungerford a [ Individual ] corporation, [ ] sole proprietorship, [ ] partnership, (hereinafter called "Borrower") with its sole place of business (if it has only one) its chief executive office (if it has more than one place of business) or residence, (if Borrower is an individual) located at 56 Toussin Ave, Ross, Ca 94957

## 1. Borrower grants to Bank a security interest in the following (hereinafter referred to as "Collateral"):

- (a) All of Borrower's present machinery, equipment, fixtures, vehicles, office equipment, furniture, furnishings, tools, and attachments, wherever located, (including but not limited to, the items listed and described on the Schedule of Collateral attached hereto and marked Exhibit "A" and by this reference made a part hereof);
- (b) All of Borrower's additional equipment, wherever located, of like or unlike nature, to be acquired hereafter, and all replacements, substitutes, accessions, additions and improvements to any of the foregoing; and
- (c) All proceeds of the assets of Borrower referred to in paragraphs (a) and (b) above, including but not limited to, all accounts, instruments, chattel paper, notes, general intangibles, goods, inventory, deposit accounts, money and other tangible and intangible property of Borrower resulting from the sale or disposition of the assets of Borrower referred to in paragraphs (a) and (b) and all proceeds of insurance.

2. Bank's security interest shall secure (1) the payment of Borrower's indebtedness in the principal amount of \$ \_\_\_\_\_ and interest, evidenced by a promissory note of even date herewith; (2) all other existing and future debts and liabilities of Borrower to Bank whether or not evidenced by notes; (3) all future advances made by Bank to or for the account of Borrower, including advances for rent, insurance, storage, repairs to and maintenance of the Collateral, taxes and discharge of any other lien, security interest or encumbrance; (4) all other indebtedness, however created, direct or contingent (including guarantees), whether arising for past, present and future loans and advances, or acquired by Bank, which Borrower may now or hereafter owe to Bank; and (5) all costs and expenses incurred in the collection of any of the foregoing, including reasonable attorneys' fees and expenses. All of the foregoing items (1) through (5) shall hereinafter be referred to as "Obligations".

## 3. Until default hereunder, Borrower shall be entitled to possession of the Collateral, which shall be kept only at \_\_\_\_\_

(Street) \_\_\_\_\_ (City) \_\_\_\_\_ (County) \_\_\_\_\_ (State) \_\_\_\_\_

and the following additional address(es) (if any) \_\_\_\_\_

and the names of the record owners and/or mortgagees of such premises are: \_\_\_\_\_

4. Borrower warrants, covenants and agrees that: (a) it will defend title to the Collateral and the security interest of Bank therein against the claims and demands of all persons; (b) it will, at its own cost and expense, keep the Collateral in a good state of repair; (c) it will not waste, destroy, misuse, abuse or illegally use the Collateral or any part thereof and will not be negligent in the care thereof; (d) it will not remove, destroy, abuse, obliterate, amend, change, cover, paint, deface, or alter the name plates, serial numbers, labels, or other distinguishing numbers or identification marks placed upon the Collateral or any part thereof by or on behalf of the manufacturer, or by or on behalf of any dealer in or rebuilder thereof, or by or on behalf of Bank; (e) it will keep the Collateral free and clear of all attachments, levies, taxes, liens, security interests and encumbrances of every kind and nature and will not sell, assign, transfer, lease, mortgage, suffer a lien upon or in any way encumber the Collateral or suffer it, or any part thereof, to come into the possession of any other person; (f) it will not secrete, abandon or remove the Collateral, or any part thereof, or suffer the removal of it, or any part thereof, from the location(s) stated above or remove or permit to be removed any equipment of accessories now or hereafter placed upon said Collateral; (g) it will immediately notify Bank of any change in Borrower's address from that stated above; (h) it shall not be released from this Agreement because of the loss, injury or destruction of the Collateral; (i) it agrees to allow Bank and its representatives free access and right of inspection of the Collateral at all times and in the event of loss or damage to the Collateral, to immediately notify Bank thereof in writing; (j) it will, at its own cost and expense, pay all taxes or other charges against the Collateral; (k) it will comply with the terms and conditions of any leases covering the premises wherein the Collateral is located and any orders, ordinances, laws or statutes of any city, state or governmental department having jurisdiction with respect to such premises or the conduct of business thereon; (l) the Collateral is not now and will not hereafter be so affixed to realty as to become a part thereof or a fixture and said Collateral is and shall at all times remain and be personal property; (m) it will, when requested by Bank, execute any and all written instruments and documents and, at Borrower's own sole cost and expense, do any other acts necessary to effectuate more fully the purposes and provisions of this Agreement; (n) it will not do or permit any act for which the Collateral might be confiscated; (o) each, every and all papers, writings, documents, instruments, contracts, agreements, memoranda, receipts, guaranties, certificates, statements, notices, assignments, notes and the like, presented to Bank by or on behalf of Borrower, at any time, in any way or to any extent connected with the events or transactions referred to or contemplated in this Agreement, are genuine and were duly executed; (p) it does hereby indemnify and save harmless Bank from all losses, costs, damages, liabilities, or expenses, including reasonable attorneys' fees which Bank may sustain or incur by reason of defending or protecting the security interests herein granted or the priority thereof or enforcing payment of the Obligations, or in the prosecution or defense of any action or proceeding concerning any matter growing out of or connected with this Agreement and/or the Obligations and/or the Collateral; and (q) neither the whole nor any part of the Collateral is being used or will ever hereafter be used, to any extent, for personal, family or household purposes, but, instead, all the Collateral is being used and will ever hereafter be used solely for commercial and business purposes.

5. Borrower at its expense, shall keep and maintain: the Collateral insured against loss or damage by fire, theft, explosion, sprinklers and all other hazards and risks ordinarily insured against by other owners who use such properties and interest in properties in similar businesses for the full insurable value thereof; and business interruption insurance and public liability and property damage insurance relating to Borrower's ownership and use of its assets. All such policies of insurance shall be in such form, with such companies and in such amounts as may be satisfactory to Bank. Borrower shall deliver to Bank certified copies of such policies of insurance and evidence of the payment of all premiums therefor. All such policies of insurance (except those of public liability and property damage) shall contain an endorsement in a form satisfactory to Bank showing loss payable to Bank and all proceeds payable thereunder shall be payable to Bank and upon receipt by Bank shall be applied on the account of Borrower's Obligations. To secure the payment of Borrower's Obligations, Borrower grants Bank a security interest in and to all such policies of insurance (except those of public liability and property damage) and the proceeds thereof and directs all insurers under such policies of insurance to pay all proceeds thereof directly to Bank. Borrower hereby irrevocably appoints Bank (and any of Bank's officers, employees or agents designated by Bank) as Borrower's attorney-in-fact for the purpose of making, settling and adjusting claims under such policies of insurance and for making all determinations and decisions with respect to such policies of insurance. Each such insurer shall agree by endorsement upon the policy or policies of insurance issued by it to Borrower as required above, or by independent instruments furnished to Bank that it will give Bank at least ten (10) days written notice before any such policy or policies of insurance shall be altered or cancelled, and that no act or default of Borrower, or any other person, shall affect the right of Bank to recover under such policy or policies of insurance required above or to pay any premium in whole or in part relating thereto. Bank, without waiving or releasing any Obligations or defaults by Borrower hereunder, may at any time or times hereafter, but shall have no obligation to do so, obtain and maintain such policies of insurance and pay such premiums and take any other action with respect to such policies which Bank deems advisable. All sums so disbursed by Bank including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be a part of Borrower's Obligations and payable on demand.

6. Bank may, at its option, pay, purchase, contest, compromise or discharge any attachments, levies, taxes, claims, debts, liens, charges, security interests or encumbrances which in its judgment may affect or appear to affect the Collateral or its rights hereunder; in addition, Bank may pay for the maintenance and preservation of the Collateral. The amounts of any payments made hereunder, together with all costs and expenses, including reasonable attorneys' fees, are all to be repaid by Borrower to Bank; and together with interest thereon at the rate charged upon the Obligations are all secured hereby. Bank may, from time to time, without notice to Borrower: release, renew, extend or alter the time or terms of payment of any obligations secured hereunder; release, surrender or substitute any property or other security; or accept any type of further security therefor, without in any way affecting said Obligations. Consent is hereby given to delay or indulgence in enforcing payment or performance of any of the Obligations. Diligence, presentment, protest, demand and notice of every kind are hereby waived. Debtor hereby waives (1) the right, if any, to require Bank to proceed against any person liable for the payment of any of the Obligations as a condition to or prior to proceeding hereunder; (2) the right, if any, to require Bank to foreclose upon, sell or otherwise realize upon or collect or apply any other property, real or personal, securing any of the Obligations, as a condition to, or prior to proceeding hereunder.

7. Time is of the essence of this Agreement. Borrower shall be in default hereunder if any of the following shall occur: (a) Borrower shall fail to pay when due or punctually perform any Obligations; or (b) any warranty, representation, promise or statement made or furnished to Bank by or on behalf of Borrower was false in any material respect when made or furnished; or (c) any event shall occur which results in the acceleration of the maturity of any debt of Borrower to others; or (d) any of the Collateral shall be lost, stolen or damaged; or (e) there shall be a levy upon, seizure or attachment of any of the Collateral; or (f) Borrower shall cease operations, be dissolved, terminate its existence or become insolvent or unable to meet its debts as they mature; or (g) Borrower shall make an assignment of its property for the benefit of creditors or suffer the appointment of a receiver of any part of its property, or otherwise commit an act of bankruptcy; or (h) any proceedings under any bankruptcy or insolvency law shall be commenced by or against Borrower or any guarantor or endorser of any Obligations; or (i) any guarantor or endorser of any Obligations shall revoke or terminate its guaranty, die, make an assignment for the benefit of creditors, suffer the appointment of a receiver over any part of such guarantor's or endorser's property.

8. Upon Borrower's default hereunder, or under any other agreement between Borrower and Bank, at the option of Bank, and without notice or demand, all of the Obligations shall become immediately due and payable and then and thereafter Bank shall have all of the rights and remedies of a secured party under the California Uniform Commercial Code. In addition, Bank shall have the right: to take and maintain possession of the Collateral

and in so doing, alone or with any other person, enter upon the premises where the Collateral may be found or is believed by Bank to be located, using all necessary force to accomplish the same (Borrower hereby waiving all claims for damages and otherwise, due to, arising from or connected with such entry and/or seizure); to maintain such possession and dispose of the Collateral on any premises of Borrower or under Borrower's control; and/or to remove such Collateral or any part thereof to any place Bank may desire. If requested by Bank to do so, Borrower shall assemble and make the Collateral available to Bank at a place to be designated by Bank. In the event of sale by Bank after default by Borrower, the Collateral need not be in view of those present attending the sale, nor at the same location at which the sale is being conducted, and Bank may sell the same in such order, priority and lots as Bank, in its uncontrolled discretion may designate. Borrower shall receive all notices required to be given and which cannot be waived by law; all other notices of every type, nature or kind are hereby waived by Borrower. Any notice required hereunder by law to be given shall be conclusively presumed given and received by Borrower when and at such time as it is mailed, postage prepaid, to Borrower at its address as set forth herein. Unless the Collateral is perishable, depreciates rapidly or is of a type customarily sold on a recognized market, Borrower will be given reasonable notice of the time and place of any public sale thereof, or of the time on or after which any private sale or any other intended disposition is to be made. Bank may be the purchaser at any public sale of the Collateral. The requirements of reasonable notice shall be met if such notice is mailed, postage prepaid, to Borrower at the address as set forth above, at least five (5) days before the time of sale or other disposition.

9. Expenses of retaking, holding, preparing for sale, selling and the like shall include, without limitation, Bank's reasonable attorneys' fees and other legal expenses and disbursements and are all secured hereby. If a sum is not realized from any such sale sufficient to pay all Obligations, Borrower hereby promises and agrees to pay any deficiency and shall remain liable to Bank for any balance due under the terms of this Agreement upon any and all of the Obligations secured hereby. The excess, if any, of net proceeds over all Obligations, after payment and satisfaction thereof, shall be paid to Borrower.

10. Bank may have and exercise one or more or all of the foregoing remedies and rights and any one or more or all the rights and remedies provided for in any and all agreements now or hereafter existing between Bank and Borrower. Bank may exercise any and all rights existent in its behalf in such order and priority and/or successively, alternately or concurrently and in such manner as it in its discretion, may direct. The rights of Bank to utilize any one or more remedies available to it under this Agreement or any other past, present or future agreements between Borrower and Bank, or under the California Uniform Commercial Code, are cumulative and may be used successively, alternatively or concurrently. No delay or failure on the part of Bank in exercising any right, privilege, remedy or option hereunder shall operate as a waiver of such or of any other right, privilege, remedy or option, and no waiver whatever shall be valid unless in writing, signed by Bank, and then only to the extent therein set forth.

11. This Agreement shall be construed and enforced according to the laws of the State of California. The provisions of this Agreement are specifically agreed to be severable. If any clause, provision or right provided for herein is unenforceable or inoperative, the remainder of this Agreement may be enforced as if such clause, provision or right were not contained herein. When the context so requires, the masculine gender includes the feminine and/or neuter, the feminine includes the masculine and/or neuter, the neuter includes the masculine and/or feminine, the singular includes the plural and the plural the singular.

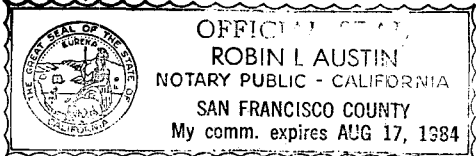
12. This Agreement cannot be changed or terminated orally. All the rights, privileges, remedies and options given to Bank hereunder shall inure to the benefit of their successors and assigns; and all the terms, conditions, promises, covenants, provisions and warranties of this Agreement shall bind the representatives, successors and assigns of each of the parties; however, Borrower may not assign this Agreement without Bank's prior written consent and any prohibited assignment shall be absolutely void. No consent to an assignment by Bank shall release Borrower or any guarantor of their Obligations to Bank. Bank may freely assign this Agreement and its rights and duties hereunder.

ATTEST:

*Robin L Austin*

*NOTARY PUBLIC*

Title:



Mark C. Hangerford

("Borrower")

By

Title:

("Borrower")

("Borrower")

Accepted this

*19th*  
*1984*

day of

*OCTOBER*

19

*83*

at Bank's place of business in the City of

*SAN FRANCISCO*

State of California.

BANK OF THE WEST

("Bank")

By

*[Signature]* AVP

## EXHIBIT "A"

This schedule is to be attached to and become part of Equipment Security Agreement or Lease dated October 14,, 19 83, between the undersigned.

Quantity	Description of Equipment	Year & Model	Serial No.	
1	4000 Cu. ft. Capacity 100 ton truck high slide solid bottom gondola coal car		PLMX 5000	
1	A new 100-ton roller bearing DOT 105A300W, 33,600-gallon non-coiled tanker car equipped with 2" foam insulation, built (by ACF Industries) generally to specification #76-3E-015, for the transportation of liquid petroleum gas (LPG) and Anhydrous Ammonia (AA).		PLMX 13000	

This exhibit is hereby verified correct and undersigned Buyer or Lessee acknowledges receipt of a copy. (Strike out inapplicable references)

Seller or Lessor


(Strike out inapplicable references)

\_\_\_\_\_(L.S.)  
(Signature if individual;  
typed name if other than individual)

\_\_\_\_\_(L.S.)  
(Signature & title if not  
individual)

~~Buyer, Borrower or Lessee~~

(Strike out inapplicable references)

\_\_\_\_\_(L.S.)  
(Signature of individual;  
typed name if other than individual)

\_\_\_\_\_(L.S.)  
(Signature & title if not  
individual)

CORPORATE ACKNOWLEDGMENT

NO. 202

State of California  
County of San Francisco } ss.

On this the 21<sup>st</sup> day of October, 1982, before me,

Paul J. Dalmon  
the undersigned Notary Public, personally appeared

John C. Pope

☒ personally known to me  
☐ proved to me on the basis of satisfactory evidence  
to be the person(s) who executed the within instrument as  
Assistant Vice President or on behalf of the corporation therein  
named, and acknowledged to me that the corporation executed it.

WITNESS my hand and official seal.

Paul J. Dalmon  
Notary's Signature

